IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

Tr.Appeal(C).No. 4 of 2007()

AGAINST THE JUDGEMENT/ORDER IN TPC.121/2006 Dated 11/01/2007
OPGW.54/2006 of FAMILY COURT, THODUPUZHA
.....

: APPELLANT/PETITIONER/RESPONDENT

SANIL DUTH, S/O.P.N.GOPINATHAN,
KAMALA MANDIRAM, KOTTAKKERAM,
PARIPPALLY P.O., KOLLAM REP. BY P/A.HOLDER,
ZENITH,OF DO. DO.

BY ADV. SRI.B.KRISHNA MANI

RESPONDENTS: PETITIONER

BEENA GEORGE, D/O.GEORGE,
PAIKADA HOUSE, THEKKUMBHAGOM P.O.,
KARIKODE VILLAGE, THODUPUZHA,
IDUKKI DISTRICT.

BY ADV. SRI.ROJO J.THURUTHIPARA

THIS TRANSFER APPEAL(CIVIL) HAVING BEEN FINALLY HEARD ON 5/7/2007, THE COURT ON 13/7/2007 DELIVERED THE FOLLOWING:

Kurian Joseph & T.R. Ramachandran Nair, JJ.

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the Family Court, Thiruvananthapuram for a decree declaring that there is no legal and valid marriage between the parties. He had filed counter claim praying for a decree of divorce. Finally, her petition was dismissed and the counter claim was allowed and consequently the marriage has been dissolved. Referring to the averments in Annexure III, learned counsel argued that she had been residing at Thiruvananthapuram and therefore the claim that she is residing within the jurisdiction of Family Court, Thodupuzha while filing Annexure I, cannot be correct. Learned counsel also pointed out that she might be living now in Thirunelveli along with the said Sajeeb and hence there are no bonafides in opposing the transfer sought by the appellant to the Family Court, Kollam.

4. Admittedly, O.P.(Guardian) No.54/2006 is one filed seeking to declare her as the guardian of the minor. It is clearly stated in paragraph 11 that the minor was ordinarily residing at the house of the respondent in Thodupuzha Taluk, within the jurisdiction of the Family Court, Thodupuzha. The allegation in paragraph 6 of Annexure I is that while the minor was in the care and custody of the mother of the respondent herein, the child was forcibly taken away by the appellant along with some 'gundas'.

5. The question is only whether the view taken by the learned Single

Judge in the circumstances, needs any interference. The learned Single Judge was pleased to take the view that when convenience of the parties is taken into consideration, the convenience of the mother of the child will out weigh that of the father. It cannot be said that the said view is perverse.

6. Learned counsel for the respondent relied upon the decision of the Hon'ble Supreme Court in **Priyanka Batra v. Manish Batra** ((2005) 12 SCC 236) taking the view that the convenience of the wife is to be preferred over the convenience of the husband. Be that as it may, the petitioner is now not in this country and he is appearing only through the power of attorney holder also.

7. Judged in the light of the above facts, we find that the circumstances pointed out by learned counsel for the appellant to show lack of bonafides on the part of the respondent herein, are not relevant for considering the issue of transfer. As held by the Supreme Court, the convenience of the wife is to be given preference and in any case presently the husband is not in station also. There is no case regarding the inconvenience to the power of attorney. Learned single judge has rightly

dismissed the transfer application. We affirm the same and dismiss the appeal without any order as to costs.

(Kurian Joseph, Judge.)

(T.R. Ramachandran Nair, Judge.)